

Date of decision: 15/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

HARISHBHAI HARIHARBHAI & ANR. vs STATE OF GUJARAT & ORS.

Appearance:

Shri S.H. Sanjanwalla, Advocate, for the Petitioners

Shri D.N. Patel, Asst. Government Pleader, for the
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat (respondent No.3 herein) on 23rd January 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 28th December 1987 in Appeal No. Surat-542 of 1984 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 3 declared the holding of the petitioner to be in excess of the ceiling limit by 525.56 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding

within the urban agglomeration of Surat. It came to be processed by respondent No. 3. After observing formalities under sec. 8 thereof, by his order passed on 23rd January 1984 under sec. 8(4) thereof, respondent No. 3 declared the holding of the petitioner to be in excess of the ceiling limit by 525.56 square meters. Its copy is at Annexure E to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. A copy of the memo of appeal is at Annexure F to this petition. By the order passed on 28th December 1987 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure G to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure E to this petition as affirmed in appeal by the appellate order at Annexure G to this petition.

3. It transpires from the impugned order at Annexure E to this petition that the land bearing survey No. 51/3 situated at Karanj in all admeasuring 18818 square meters was declared to be used for agricultural purposes. It transpires from the impugned order at Annexure E to this petition that a scheme under sec. 21(1) of the Act with respect to an area of 15176 square meters therefrom was sanctioned. That might have been after coming into force of the Act. Learned Advocate Sanjanwalla for the petitioner has however submitted that, in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi oBegum v. State of U.P. and others reported in AIR 1993 Supreme Court 2465, if there was no master plan in existence on the date of coming into force of the Act and if a particular land was used for agricultural purposes on that date, that parcel of land should be excluded from the holding of the land-holder. Shri Sanjanwalla for the petitioner has also relied on the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567 for the purpose of exclusion of the constructed property from the holding of the petitioner. As against this, learned Assistant Government Pleader Shri Patel for the respondents has urged that a plot situated in Gandhi Vihar Co-operative Housing Society in Survey No.. 51/2 at Karanj admeasuring 194.81 square meters was shown as vacant land in the declaration and such land could not be said to be a constructed property. He has further submitted that, since the scheme under sec. 21(1) of the Act was sanctioned with respect to a large area of land in survey No. 51/3 situated at Karanj, it could not be said that it was used for agricultural purposes.

4. It appears that the law declared by the Supreme Court in its aforesaid two binding rulings was not in contemplation of the authorities below while deciding the matter. Since the law declared by the Supreme Court in its aforesaid two binding

rulings would be retrospective in operation on interpretation of the relevant statutory provisions contained in the Act, the effect thereof will have to be considered with respect to the present case. It would therefore be necessary to remand the matter to respondent No.. 3 for restoration of the proceeding to file and for his fresh decision according to law in the light of the aforesaid two binding rulings of the Supreme Court and in the light of the finding whether or not the land bearing survey no. 51/3 situated at Karanj was used for agricultural purposes on the date of coming into force of the Act and what was its situation in the master plan, if any, in existence on the date answering its definition contained in sec. 2(h) of the Act. Respondent No. 3 will also have to find out whether or not the constructed properties were in existence prior to coming into force of the Act and whether such construction was authorised. The impugned order at Annexure E to this petition as affirmed in appeal by the appellate order at Annexure G to this petition will have therefore to be set aside. It will be open to the petitioner to canvass all other points which are canvassed in this petition at the time of hearing after remand.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No. 3 herein) on 23rd January 1984 under sec. 8(4) of the Act at Annexure E to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 28th December 1987 in Appeal No. 542 of 1984 at Annexure G to this petition is quashed and set aside. The matter is remanded to respondent No.. 3 for restoration of the proceeding to file and for his fresh disposal according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
